

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:10-CR-139-BR

UNITED STATES OF AMERICA

v.

ANTONIO MARCIAL NAVARETTE

ORDER

This matter is before the court on defendant's motion to correct his sentence in accordance with Rules 32(c)(1) and 52(b) of the Federal Rules of Criminal Procedure. (DE # 94.) The government has filed a response in opposition. (DE # 96.) The court agrees with the government that because defendant challenges his sentence based on a purported error in calculating the applicable sentencing guideline range, the motion must be construed as a second or successive habeas corpus petition under 28 U.S.C. § 2255. See United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003) ("[A] motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application"). As such, defendant must first seek authorization from the Fourth Circuit Court of Appeals before this court can consider the motion. See 28 U.S.C. §§ 2244(b), 2255(h). The motion is DISMISSED WITHOUT PREJUDICE. The court finds that defendant has not made "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and therefore, a certificate of appealability is

DENIED.

This 2 October 2018.

A handwritten signature in green ink, reading "W. Earl Britt".

W. Earl Britt
Senior U.S. District Judge